

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

COMMUNITY MEMORIAL HOSPITAL

Employer

and

CASE 7-UC-529

LOCAL 79, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Petitioner

APPEARANCES:

Philip W. Nantz, Attorney, of Grand Rapids, Michigan, for the Employer
Robert Lathrop, of Detroit, Michigan, for the Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer filed a brief, which has been carefully considered.

3. The Petitioner seeks to clarify its existing contractual unit to include special procedures technicians, which it asserts are simply a new name given to cardiopulmonary technicians which have been historically included in the unit. The Employer asserts that the special procedures technicians perform a wholly different job from the cardiopulmonary technicians, and because the former requires certification, it is specifically excluded from the bargaining unit.

The Employer operates an acute care hospital, with an attached long-term care unit, in Cheboygen, Michigan. It is licensed for 113 beds, with 63 in general acute care, and 50 in long term care. The Employer employs approximately 430 employees, with about 90 in the bargaining unit represented by the Petitioner.²

The Employer has maintained a collective bargaining relationship with the Petitioner since 1972 when Petitioner was certified by the State of Michigan as the exclusive collective bargaining representative of a service and maintenance unit. The parties have entered into a series of collective bargaining agreements, the term of the most recent being November 15, 1998 through October 7, 2001. The unit therein is described as “all regular full-time and regular part-time employees employed at Community Memorial Hospital, Cheboygen, Michigan, who work 16 or more hours per week as: licensed practical nurses, aides, unit clerks, nursing assistants, dietary and kitchen employees, laundry and housekeeping employees, maintenance employees and unregistered technicians, but excluding all registered professional nurses, administrative employees, office and clerical employees, casual and temporary employees, co-op students, supervisors as defined in the Act, and all other employees.”³ Appendix A to the contract further explicates the classifications in the unit to include custodial aide, custodian, dietary aide, baker-cook, materials management assistant, operating room assistant, nursing assistant, unit clerk, physical therapy aide, restorative assistant (ECU), multi-functional I, surgical technician, multi-functional II, building & grounds II, building & grounds I, and LPN.⁴

In 1994, the Employer contracted with the Joint Commission for Accreditation of Health Care Organizations (JCAHO) to perform a survey of the facility and the quality of services offered. The survey results indicated that the department of cardiopulmonary services was deficient in a number of categories, and received a rating of “1”, the lowest rating in four categories. An overall negative rating could result in a hospital or health care facility losing its

² The Employer’s registered nurses are represented by the Michigan Nurses Association, the only other organized bargaining unit at the Employer’s facility.

³ This unit description is slightly different from the unit as certified by the State of Michigan in 1972.

⁴ Changes were made to the classification categories from the previous contract, but there is no evidence in the record with respect to the basis for and/or the negotiations which led to those changes. Cardiopulmonary technician, as well as other classifications, were specifically listed in Appendix A of the previous contract, but are not specifically listed in the current contract. The parties, however, stipulated that the cardiopulmonary technician classification is in the unit.

accreditation. Not having JCAHO accreditation can exclude a health care facility from Title 19 funding, which provides for Medicare and Medicaid reimbursements. Some of the low ratings were because cardiopulmonary technicians were performing duties which JCAHO deemed they were unqualified to do. The Employer had no educational program or document of competency for the cardiopulmonary technicians to perform several procedures, one of which was ventilator management.

In response to this negative rating, the Employer reorganized and upgraded the department of cardiopulmonary services, and recruited Toni Leah Bush as manager of the department of cardiopulmonary services on June 1, 1994. The services provided by the cardiopulmonary department fall within four general categories: diagnostics, respiratory care, rehabilitation and contract.⁵ When Bush began working with the Employer, the cardiopulmonary services department employed three certified respiratory therapy technicians: the manager of the department, a respiratory therapy technician on staff, and another respiratory therapy technician on call. All other persons working in the department were noncredentialed.⁶ As part of her mandate, Bush reorganized the department, and instituted training and credentialing criteria to address the shortcomings of the department found by JCAHO. She created the special procedures technician classification at that time. Bush also notified employees during a staff meeting with the cardiopulmonary services department that under the reorganization of the department, all employees in the department would be required to be credentialed, licensed or registered. In order to bring the department into conformity with the organizational plan, the Employer offered a program to employees to study and train in their chosen area of interest, either cardio or respiratory, and provided the necessary textbooks, study areas, stipends to attend seminars, and mentoring opportunities with specialists at the hospital in specific disciplines. The Employer also assured employees who chose not to upgrade their status that they would be placed in a position elsewhere in the hospital.

Currently there are two people in the special procedures classification, Pat Ash and Cheryl Haapapuro. Ash was a cardiopulmonary technician in June 1994 when Bush created the special procedures classification, and prepared for the credentialing exam through the hospital program. Another cardiopulmonary technician followed the course of study at the same time as Ash, but did not pass the certification exam. The record is silent regarding whether the employee remained as a cardiopulmonary technician, continued employment with the Employer in a different department and classification, or terminated her employment. The record is not clear as to exactly when Ash started performing the duties of a special procedures technician, but on June 9, 1997, at Bush's recommendation, the Employer increased Ash's wage from \$9.99 to \$11.50 an hour, retroactive to November 3, 1996, for the special

⁵ Contract services encompass the same services as inpatient respiratory care, but are provided on a contract basis to long-term care facilities and home medical equipment suppliers.

⁶ There is no evidence in the record indicating how many employees this constituted, what were their classifications, and whether or not they were in the bargaining unit represented by the Petitioner.

procedures technician position. This is not the first instance of a cardiopulmonary technician upgrading her education base for certification, and moving out of the bargaining unit as a result. In 1992, Colleen McGwen became a certified respiratory technician, and Edwardine Robinson also obtained certification and transferred from a cardiopulmonary technician to a certified respiratory technician. Robinson is now a registered respiratory therapist. Haapapuro began employment with the Employer as a special procedures technician sometime in 1997. Ash and Haapapuro are both certified cardiographic technicians (CCT) and cardiopulmonary resuscitation and emergency cardiac care providers (ACLS).⁷ The wage scale for a special procedures technician ranges from \$11.00 an hour to \$15.00 an hour. It appears that Ash was at the top of the wage scale for cardiopulmonary technicians at \$9.99 when she transferred to the special procedures technician classification in 1997.

Currently no one is classified as a cardiopulmonary technician and the record is unclear as to when the position was last filled. The cardiopulmonary technician would report out of respiratory care services through the respiratory care practitioner (RCP) II's and III's, and then to the manager of the cardiopulmonary department, Toni Bush. The Employer provided a job description for the cardiopulmonary technician dated 1989, but because it has not been updated since the reorganization of the cardiopulmonary services department, it is not accurate for the cardiopulmonary technician duties today. The cardiopulmonary technician would be responsible now for stocking supplies, setting up equipment for use in testing and maintaining that equipment, but would not be responsible for any direct patient care.

The special procedures technician reports out of cardio/pulmonary diagnostics directly to Bush. The special procedures technician performs some of what had been the cardiopulmonary technician duties, and engages in direct patient care with minimal general supervision. The direct patient care consists of meeting with patients who have been referred by physicians, taking the patient's history, administering various cardio or pulmonary function tests and recording the results. The special procedures technician tailors the test to the patient's abilities and needs based on the patient's history, introducing "challenges" where appropriate in order to recreate the stress situations which brought the patient to the hospital. For example, when running an electroencephalograph of the brain waves, the special procedures technician will ask the patient to hyperventilate in order to set the environment for a seizure episode, and then record it for evaluation. Or in the case of pulmonary function testing of asthma patients, the special procedures technician will introduce a substance into the bronchial airways to induce certain bronchial conditions for testing. In these circumstances, where the testing conditions create a potential risk for the patient, the technician administering the test must have the training to recognize the onset of an emergency and initiate the appropriate responses. The special procedures technician has the training and the certification to satisfy these responsibilities.

⁷ The Employer now requires that all staff in the cardiopulmonary services department possess the ACLS (Advanced Cardiac Life Support) certification in addition to their respective specialty certification or licensure.

The cardiopulmonary technician used to perform these tests, but without the “challenge” procedures because of the inherent risk and the cardiopulmonary technician’s lack of training and certification in emergency support procedures. With the upgrading of care provided by the cardiopulmonary services department, and the imposition of credentialing requirements necessary to the upgrade, these duties have been removed from the cardiopulmonary technician job description. With the CCT certification, the special procedures technician is authorized to perform all noninvasive procedures, many of which involve the administering of the various tests. Additionally, with the ACLS certification, the special procedures technician can initiate certain invasive procedures necessary to emergency response. Such invasive procedures include drawing blood, intubating (insertion of a tracheal tube to aid breathing), suctioning procedures and starting intravenous lines. The cardiopulmonary technician does not perform any of the foregoing.

According to the Employer, the difference between credentialed and non-credentialed employees is that the latter (such as the cardiopulmonary technicians), have not demonstrated either the competency or the data base to be allowed to function independently, and thus require very close supervision. Credentialed employees require only more general supervision and are capable of providing direct patient care. The Employer, at least for the purposes of this issue, is equating “unregistered” (as it is used in the unit description) with the absence of certification, licensure or registration. Except for the licensed practical nurses and the nursing assistants who are specifically included in the unit by agreement of the parties, no classifications encompassed in the unit description require certification, registration or licensure. If a person is certified, they have been historically excluded from the unit.⁸

As a threshold matter, I find the instant unit clarification petition is both appropriate and timely. Although the special procedures technician classification was established in late 1994 or early 1995, not until 1997 was the position filled. During contract negotiations in 1998 the parties were unable to resolve the dispute whether to include the classification in the unit, and essentially “agreed to disagree” over the issue; they executed a contract and specifically reserved this issue for the Board to resolve. The unit clarification petition was filed by the Union only a few months after the contract was executed. Thus, the parties have proceeded in a manner which minimizes disruption of their bargaining relationship, and the unit clarification procedure is an appropriate method for resolution of the dispute. *St. Francis Hospital*, 282 NLRB 950 (1987); *Union Electric Co.*, 217 NLRB 666 (1975).

Certified and/or registered technicians have been historically excluded from the existing bargaining unit. The special procedures technician classification requires certification as a cardiographic technician, as well as certification as cardiopulmonary resuscitation and

⁸ In 1995 the Employer hired Steven Beltz, a certified surgical technologist. In 1995 or 1996, the Union raised the issue of including Steve Beltz in the Unit. The bargaining unit includes a classification for surgical technician, but the record is silent whether there is currently any one in that classification. The Employer asserted that because Beltz was certified, he did not belong in the unit. The Petitioner did not pursue the issue.

emergency cardiac care provider, a certification required for all employees in the department of cardiopulmonary services. The bargaining unit specifically includes only “unregistered technicians” and excludes all other employees not specifically included in the unit description. The Petitioner has failed to show that the special procedures technician legitimately falls within the category of an unregistered technician. Under analogous situations, special procedures technicians who possess specialized training and certification have been found technical employees. See *Southern Maryland Hospital Center*, 274 NLRB 1470 (1985); *St. Elizabeth’s Hospital of Boston*, 220 NLRB 325 (1975). In the circumstances of the instant case, it would not be appropriate to include an ostensibly technical employee in an essentially non-professional unit absent agreement of the parties.

Consequently, based on the foregoing and the record as a whole, I conclude that the special procedures technician is excluded from the unit.

4. Accordingly, **IT IS HEREBY ORDERED** that the Petitioner’s request for the inclusion of the special procedures technician in its existing unit is denied.⁹

Dated at Detroit, Michigan, 19th day of May, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
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⁹ Under the provisions of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **JUNE 2, 1999**.